

OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DATE: APR 24 1974
REPLY TO:
ATTN OF: ISD

OMB Declassification & Release Instructions on File - No Referral to OMB

SUBJECT: Proposed Privacy Legislation

* Liaison Representative to the Domestic Council Committee on the Right of Privacy

At the last meeting of liaison representatives, Dr. Marik indicated that we would be working with several agencies which had expressed major concerns about the provisions of H.R. 12206 to develop alternative language which would achieve the objectives of the bill while avoiding some of its more objectionable aspects.

Attached for your review and comment is a draft alternative bill developed in cooperation with those agencies. We believe this draft overcomes objections expressed in agency reports, comments, and testimony on H.R. 12206 and related bills. Earlier drafts of this bill were discussed with Messrs. Buchen and Metz and we agreed that it would be appropriate to discuss this subject at tomorrow's meeting.

Copies of this draft have also been provided to agencies which have been requested to furnish reports on H.R. 12206 or testify before Congressman Moorehead's subcommittee on April 30, 1974.

It is requested that written comments on this draft (including suggested alternative language) be provided at tomorrow's meeting or as soon thereafter as possible.

Wally Haase
Walter W. Haase
Deputy Associate Director
for Information Systems

Attachment

A BILL

To amend title 5, United States Code, to provide that persons be apprised of records concerning them which are maintained by Government agencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That (a) title 5, United States Code, is amended by adding immediately after section 551, thereof, the following paragraphs:

"(14) "Criminal justice" means any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals; as well as the activities of prosecutors, courts, correctional probation, pardon, or parole authorities;

"(15) "Administrative records" means files or data (including identifiable individual data) which may be used to make determinations to affect an individual;

"(16) "Criminal justice agency" means an agency or component thereof which performs a criminal justice activity as its principal function;

"(17) "Criminal justice information" means any information compiled by a criminal justice agency;

"(18) "System of records" means any organized file or grouping of data maintained by an agency whether or not stored in a computer; and

"(19) "Statistical and research purposes" means uses of data

for aggregate analytic or evaluative ends and specifically excludes any uses of individual data for the purpose of making a determination intended to affect an individual."

(b) Title 5, United States Code, is amended by adding immediately after section 552 thereof the following new section:
"552a. Records about individuals.

"(a) Each agency that maintains a system of records about identifiable individuals which may be retrieved by reference to or are indexed under such individual's name, or some identifying number or symbol, shall with respect to such records--

"(1) at least annually publish a public notice of the existence and character of each system of records which it maintains, such notice to include:

"(A) the name of the system;

"(B) the nature and purpose of the system;

"(C) the categories and numbers of individuals on whom records are maintained;

"(D) the policies and practices of the agency regarding storage, retention, and disposal of such records;

"(E) the categories of information sources;

"(F) a description of all uses made of the records including the categories of users for each;

"(G) the title and address of the individual immediately responsible for the system; and

"(H) rules establishing reasonable times, places, fees to the extent authorized, identification requirements and other procedures to be followed with respect to making records promptly available to the individual to whom they pertain, including any special provisions governing access to medical records in cases where the agency determines that their disclosure could be injurious to such individual, and otherwise to implement the provisions of this section;

"(2) establish, or modify existing, procedures for collecting information about individuals to inform the individual of the uses which will be made of the requested information and the consequences, if any, of not providing any portion or all of that information;

"(3) refrain from disclosing any records, or any information contained therein, to any other agency or individual not employed by the agency maintaining the record, except--

"(A) for a use that is expressly required by law,
or

"(B) for a use clearly within the stated purposes of the system as described in the general notice about the system published in accordance with subsection (a) (1), above, at least ninety days prior to such use, or

"(C) with notification of the individual concerned at least ten days prior to such disclosure or, in the

event such individual cannot be located or communicated with after reasonable effort, with notification of members of the individual's immediate family or guardian, or only in the event that such individual, members of the individual's immediate family, and guardian cannot be located or communicated with after reasonable effort, upon good cause for such disclosure, or

"(D) where the recipient can ensure that such records, or any information contained therein, will be used only for statistical or research purposes;

"(4) maintain an accurate record of the name and address of any person or agency outside the agency maintaining the record to whom any information contained in such records is disclosed, the purpose for which such disclosure was made, and the basis for such disclosure under subsection (a) (3) above;

"(5) establish and maintain procedures to ensure that there will be no disclosure of any record or any information contained therein to individuals within the agency other than those individuals who need to examine or use such record or information in the performance of their duties for the agency;

"(6) maintain information of any kind in any record with such accuracy, completeness, timeliness, and pertinence as is necessary to permit accurate and fair determinations relating to the individual to whom such record pertains

which may be made by the agency on the basis of such information;

"(7) permit an individual to inspect any record pertaining to him and to have copies made of all or any portion thereof;

"(8) permit any individual to supplement the information contained in any record pertaining to him by the addition of any information of reasonable length which such individual and the agency agree is pertinent to his record;

"(9) whenever the agency corrects or removes erroneous information about an individual in such record, notify all agencies and persons to whom such erroneous information had been disclosed within the preceding two years of its correction or removal;

"(10) inform the individual to whom the record pertains if it has determined not to correct or augment his record in conformance with his request and the reason therefor;

"(11) if the agency and the individual to whom the record pertains cannot agree as to the accuracy, pertinence or completeness of the record and unless there is reasonable grounds to believe that the dispute is frivolous or irrelevant, permit the individual to whom the record pertains to file a statement setting forth the nature of the dispute, and in any subsequent report containing the information in

question, clearly note that it is disputed by the individual, and provide copies of such statements upon request of persons to whom the disputed information has been disclosed.

"(c) This section shall not apply to systems of records or information contained therein that are--

"(1) By Statute or by Executive Order specifically required to be kept secret in the interest of the national defense and foreign policy;

"(2) criminal justice information;

"(3) investigative files compiled for the purpose of determining eligibility for Federal employment, military service or access to classified information; or

"(4) maintained for purposes related to Government employment;

"(5) authorized by law to be collected, maintained, and used only for statistical reporting or research purposes or information derived from administrative records but maintained apart therefrom and used only for statistical reporting or research purposes whether located in the Federal Government departments or agencies or their agents, or the intergovernmental cooperative agency with which they have legal arrangements to furnish statistical services.

"(c) The President shall report to Congress before June 30th of each year on an agency-by-agency basis the number of records and the number of files which were exempted from the

application of this section by reason of clauses (1), (2), (3), and (4) of subsection (b) during the immediately preceding calendar year.

"(d) Any person who knowingly and willfully violates a provision of this section, or permits such a violation, shall be fined \$1,000.

"(e) Nothing in this section shall be construed to permit transfer or similar distribution of any information deemed confidential by other statutes."

(c) The table of sections of change 5 of title 5, United States Code, is amended by inserting:

"552a. Records relating to individuals."

immediately below:

"552 Public information; agency rules; opinions, order, records, and proceedings."

SEC. 2. The amendments made by this Act shall become effective on the ninetieth day following the date of enactment of this Act.